

**ORDINANCE OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF FLOWOOD  
MISSISSIPPI REGULATING SOUND WITHIN THE CITY OF FLOWOOD**

WHEREAS, the Mayor and Board of Aldermen (the “Governing Body”) of the City of Flowood, Mississippi (the “City”) have a central purpose of preserving and protecting the health, safety and welfare of the general public;

WHEREAS, the Governing Body of the City finds that excessive, unnecessary, and unreasonable Sounds within the City are detrimental to the public health, safety, welfare and peace and quiet of the inhabitants of the City and therefore, are declared a public nuisance;

WHEREAS, each person in the City is entitled to live in an environment which is free from excessive, unnecessary, and unreasonable Sounds;

WHEREAS, the establishment of Sound regulations will further the public health, safety, welfare and peace and quiet of the inhabitants of the City; and

WHEREAS, the Governing Body finds this Ordinance to be in the best interest of the City and in full compliance with the City Ordinances.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY AS FOLLOWS:

**Section 1 – Short Title and Severability.**

**Section 1.1 – Short Title.**

This Ordinance shall be known as the Sound Regulation Ordinance of the City of Flowood, Mississippi.

**Section 1.2 – Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed as a separate distinct and independent provision, and such holding shall not affect the validity of the remaining portion thereof.

**Section 2 – Definitions.**

Terms used in this Ordinance shall be defined as follows:

- (1) *Ambient Sound* means the all-encompassing Sound level associated with a given environment, which is a composite of Sounds from all sources, excluding the alleged Objectionable Sound, at the location and approximate time at which a comparison with the alleged Objectionable Sound is to be made.
- (2) *Construction Activities* means any and all activities incidental to the construction, erection, demolition, assembling, altering, installing or equipping of buildings, structures, roads or appurtenances thereto.

- (3) *Construction Equipment* means construction devices, such as, but not limited to, pile drivers, power shovels, derricks, hoist tractors, loaders, rollers, concrete hauling motor vehicles, pavement breakers, bulldozers, crawler-tractors, rotatory drills and augers, cranes, ditchers, trenchers, scrapers, wagons, pumps, compressors, pneumatic power equipment, or other mechanical apparatus operated by fuel or electric power in the construction, repair or demolition of any building, structure, land, street, alley, waterways, or appurtenances thereto.
- (4) *Emergency Work* means the use of machinery, equipment, vehicles, manpower or other activity in an effort to protect, maintain, provide or restore safe conditions in the City or for the citizens of the City, or work by private or public utilities when restoring utility service.
- (5) *Engine* means any internal combustion engine or machine which converts energy into mechanical force or motion, such as, but not limited to any gasoline or diesel engine.
- (6) *Objectionable Sound* means any Sound which exceeds the general sound regulations prescribed by section 3 of this Ordinance.
- (7) *Residential Premises* shall mean any premises where single or multiple dwelling units exist and shall include but not be limited to schools, churches, nursing homes and similar institutional facilities including any commercial premises where more than fifty (50%) percent of the gross floor area is used as dwelling units.
- (8) *Sound* means energy waves or vibrations traveling through air, water, or some other medium, especially those within the range of frequencies that can be detected by the human ear.
- (9) *Sound-Amplifying Equipment* means any machine or device for the amplification of the human voice, music, or any other Sound.
- (10) *Plainly Audible* means any Sound that can be detected by a person using his or her unaided hearing faculties, however; words or phrases need not to be discernible and said Sound shall include bass reverberation.

### **Section 3 – General Sound Regulations.**

It shall be unlawful for any person to make or continue to cause to be made any loud, unnecessary or unusual Sound which disturbs the peace and quiet of any Residential Premises or which causes discomfort or annoyance to any reasonable person of normal sensitivity.

The standards which may be considered in determining violations of the provisions of this Ordinance shall include, but not be limited to, the following:

- (1) The Sound level of the Sound at issue;
- (2) The Ambient Sound level;
- (3) The proximity of the Sound at issue to Residential Premises;
- (4) The nature and zoning of the area from which the Sound at issue emanates;
- (5) The population density of the area within which the Sound at issue is Plainly Audible;

- (6) The time of day or night the Sound at issue is Plainly Audible;
- (7) The duration of the Sound at issue; and
- (8) Whether the Sound at issue is continuous, recurrent or intermittent.

#### **Section 4 – Specific Objectionable Sounds.**

Objectionable Sounds, which are considered violations of this Ordinance, shall be deemed to include but not be limited to, unreasonable, loud, and excessive Sound caused by the following activities or operations:

- (1) The use of any automobile, motorcycle, truck, tractor, or other vehicle so out of repair, loaded, or operated in such a manner as to create loud and unnecessary Sounds, such as but not limited to, spinning or squealing the tires, backfiring or racing the Engine, Jake Brakes, and the use of horns and whistles (even if not part of a vehicle), except as necessary to warn of danger;
- (2) Yelling, shouting, hooting, whistling, or singing, between the hours of 9:00 pm and 7:00 am in proximity to Residential Premises;
- (3) The use of or operation between the hours of 9:00 pm and 7:00 am of any Construction Equipment, power saw, planer, hammer, sander, or other unreasonably loud tool or appliance in proximity to Residential Premises;
- (4) The operation of an Engine, unless the Sound from such Engine is equipped with a muffler device reasonably sufficient to deaden such Sound;
- (5) The operation of Sound Amplification Equipment including without limitation the use of Sound Amplification Equipment in a motor vehicle in such a manner that the Sound is Plainly Audible at thirty (30) feet from the location of the Sound Amplification Equipment or motor vehicle;
- (6) The playing of musical instruments between the hours of 9:00 pm and 7:00 am in proximity to Residential Premises; and
- (7) Vehicle loading and unloading, including without limitation garbage dumpster collection, between the hours of 9:00 pm and 7:00 am in proximity to Residential Premises.

#### **Section 5 – Exceptions.**

This Ordinance shall not apply to the following activities or Sound sources:

- (1) Official school bands and athletic and entertainment events that are conducted from 7:00 am to 12:00 midnight, Monday through Saturday and 12:00 Noon to 8:00 pm on Sunday. The foregoing exception shall not apply to school entertainment events sponsored or organized solely by student organizations or other organizations or persons unaffiliated with schools;
- (2) Any mechanical device, apparatus or equipment related to or connected with an emergency or Emergency Work;

- (3) Construction Activities between the hours of 7:00 am and 7:00 pm Monday through Saturday and 9:00 am to 6:00 pm on Sunday; provided that the operation of an Engine shall not be exempt pursuant to this section if such Engine is not equipped with suitable exhaust and intake Sound mufflers.
- (4) Agricultural operations provided such operations take place between the hours of 6:00 am and 8:00 pm; provided that the operation of an Engine shall not be exempt pursuant to this subsection if such Engine is not equipped with suitable exhaust and intake Sound mufflers;
- (5) Maintenance of streets, trees, grass, and Residential Premises, provided said maintenance activities take place between the hours of 7:00 am and 7:00 pm;
- (6) Operations and activities conducted by or on behalf of the City;
- (7) Church bells and chimes between the hours of 7:00 am and 9:00 pm;
- (8) Police and public safety vehicles, equipment, or operations;
- (9) Industrial operations, provided such operations occur within areas zoned for industrial use and such resulting Sounds do not unreasonably affect nearby Residential Premises; and
- (10) Aircraft operations.

#### **Section 6 – Special condition permits.**

The Governing Body of the City hereby authorizes the Chief of Police and/or City Clerk to grant special condition permits, which shall allow otherwise unlawful Sound for a period not exceeding three (3) days. Such special condition permits may be renewed for periods not exceeding three (3) days, at the discretion of the Chief of Police and/or City Clerk and in accordance with the standards for issuance of special condition permits pursuant to section 6.2.

#### **Section 6.1 – Application for Special Condition Permit.**

Any special condition permit issued under this section should be issued only on written application, which shall set forth the following:

- (1) The name and address of the person applying for the special condition permit;
- (2) The location of the activity for which the special condition permit is desired;
- (3) The dates and times for which the special condition permit is to be issued;
- (4) The anticipated Sound level reasonably expected by the activity for which the special condition permit is sought;
- (5) The specifications and type of Sound Amplifying Equipment to be used, if any;
- (6) Any additional information or facts which would indicate a greater interest in permitting the Sound producing activity than maintaining the Sound level of the specified area within the City;

- (7) At least one person who shall be responsible for conducting the activity in compliance with the provisions of the special condition permit, such responsible person or his/her designee must be present at all times during the conduct of the permitted activity; and
- (8) Other such information as the Chief of Police and/or City Clerk shall deem necessary and proper.

The application shall become a part of any special condition permit issued.

### **Section 6.2 – Issuance of Special Condition Permits.**

The City Clerk or Chief of Police shall consider the following factors in considering whether to issue a special condition permit:

- (1) The anticipated Sound level as set out on the permit application or reasonably expected from the activity for which the special condition permit is sought;
- (2) The time of day the Sound producing activity will take place;
- (3) The proximity of the Sound producing activity to Residential Premises;
- (4) Prior complaints from residents as a result of other similar activities; and
- (5) Any additional information or facts which would indicate a greater interest in permitting the Sound producing activity than maintaining the Sound level of the specified area within the City.

The Chief of Police or the City Clerk shall not consider the content of any message shared or disseminated through activity for which the special condition permit is sought. Such permit shall be issued or denied within seven (7) days of receipt of a completed, signed permit application. If an application for a special condition permit is denied, the applicant may appeal the decision to the Mayor and Board of Aldermen. Written notice of such appeal shall be delivered to the City Clerk within ten (10) days after the denial of the special condition permit or the right to appeal shall be waived.

### **Section 6.3 – Revocation of permits.**

The Chief of Police and/or the City Clerk shall have the authority to revoke any special condition permit issued upon a finding of any of the following:

- (1) The Sound producing activity is being conducted in a manner inconsistent with the permit, including the description of the activity as set out in the permit application; and
- (2) Any other good cause, except the content or informational message, if any, contained in the Sound.

### **Section 7 – Enforcement.**

The enforcement of this Ordinance is the responsibility of the Chief of Police or his/her designee.

**Section 8 – Violations and penalties.**

It shall be a misdemeanor to conduct, participate, or permit any activity in violation of the provisions of this Ordinance.

Any person(s) convicted of violation of the provisions of this Ordinance shall be punished by a fine of not more than One Thousand Dollars (\$1,000.00) and/or ninety (90) days in jail.

A motion to adopt the Ordinance was made by Alderman Flynt and seconded by Alderman Rhoads. The Ordinance was put to a vote, and the result was as follows:

Alderman Flynt:	Aye
Alderman Harmon:	Aye
Alderman McDaniel:	Aye
Alderman Rhoads:	Absent
Alderman Smith:	Aye

The motion having received the affirmative vote of a majority of the members of the Board of Aldermen present, being a quorum of said Board of Aldermen, the Mayor declared the motion carried and the Ordinance adopted this the 18<sup>th</sup> day of April, 2011.

s/Gary Rhoads  
Gary L. Rhoads, Mayor

Attest:

s/Julia Williams  
Julia Williams, City Clerk